

NRL COOPERATIVE AGREEMENT TERMS
for
Institutions of Higher Learning, Education, Hospitals, and Other
Non-Government, Non-Profit Organizations

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ARTICLE 1. PURPOSE AND REFERENCES.

1.1. The purpose of this Agreement is to accomplish the research set forth in Block 15 of the AWARD/MODIFICATION HQ-NRL 4200/9 under an assistance agreement authorized by 10 U.S.C. 2358.

1.2. The terms of this Agreement implement applicable provisions of the DoD Grant and Agreement Regulations (DoDGARs, 32 C.F.R. Parts 21 to 37) which may be accessed on the Internet at <http://www.gpoaccess.gov/ecfr/>. References herein and in the DoDGARs to Office of Management and Budget (OMB) circulars may be accessed on the Internet at <http://www.whitehouse.gov/OMB/>. The terms of this Agreement are subject to the laws of the United States which shall take precedence over any conflicting term in the Agreement.

1.2.1. 32 C.F.R. Part 32 is incorporated herein by reference as it applies to grant and cooperative agreement awards and subawards to institutions of higher learning, education, hospitals, and other non-profit organizations.

1.2.2. 32 C.F.R. Part 33 is incorporated herein by reference as it applies to awards and subawards to State and Local Government instrumentalities.

1.1.3. 32 C.F.R. Part 34 is incorporated herein by reference as it applies to awards and subawards to for-profit organizations.

2. ARTICLE 2. DEFINITIONS.

2.1. The definitions in 32 C.F.R. 32.2 apply to awards and subawards to institutions of higher education, hospitals, and other non-government, non-profit organizations.

2.2. The definitions in 32 C.F.R. 34.2 apply to awards and subawards to for-profit organizations, and the definitions in 32 C.F.R. 33.3 apply to awards and subawards to state and local government instrumentalities..

2.3. The following additional definitions apply to this Agreement.

2.3.1. Agreement means this Cooperative Agreement.

2.3.2. Award Documentation means provisions of this Agreement (and any Modifications) that are in addition to the Agreement Terms.

2.3.3. Consortium means any combination of universities, other nonprofit organizations, governmental organizations, for-profit organizations, and other entities whose cooperative participation in this Agreement is as a Party. When a Consortium is a Party to this Agreement, its Articles of Collaboration shall expressly establish the authority of the Consortium's designated representative to enter into this Agreement and bind the Consortium and its individual members.

2.3.4. Effective Date means the date of last signature by the authorized representatives of the Parties approving this Agreement.

2.2.5. Government means the Federal Government of the United States of America.

2.3.6. Participant means any Recipient, Sub-recipient or Consortium member receiving financial assistance directly or through a Party under this Agreement.

2.3.7. Party means a signatory to this Agreement, and Parties means all of the signatories to this Agreement.

2.3.8. Payable Milestones means predetermined measures of performance (in terms of expenditure of effort or accomplishment of tasks described in the SOW) or other defined events (which may be based upon elapsed periods of time or the arrival of specified dates) expressly agreed to by the Parties and incorporated herein for determining when payment entitlements become due and requests for payment may be invoiced to the Government by the Recipient.

ARTICLE 3. PERIOD OF PERFORMANCE.

Unless extended or sooner terminated, the Period of Performance of this Agreement shall be as specified in Block 18 on the AWARD/MODIFICATION HQ-NRL 4200/9. If the Parties desire to extend the Period of Performance, they will proceed as provided herein, Paragraph 5.3 for Modification of the Agreement. Any request for an extension by the Recipient should include a proposed revision to the Payable Milestones, if applicable.

ARTICLE 4. STATEMENT OF WORK (SOW).

4.1. The SOW identified in Block 15 of AWARD/MODIFICATION HQ-NRL 4200/9 is hereby incorporated and provides a detailed description of the work to be accomplished under this Agreement and the respective responsibilities of the Parties.

4.2. All changes to the SOW and the Payable Milestones, if applicable, must be approved by the Government Technical Representative named in Block 21 of AWARD/MODIFICATION HQ-NRL 4200/9 and effected in a Modification to this Agreement. Failure to obtain Government approval for SOW changes could result in the disallowance of costs for unapproved work and/or termination of the Agreement.

ARTICLE 5. PERFORMANCE PLAN AND PROGRAM REVIEWS

5.1. Performance Plan. The SOW and Schedule of Payable Milestones, if applicable contained herein shall serve as the initial Performance Plan. Changes to the Performance Plan (i.e., changes to the SOW and Payable Milestones) must be approved by the Grants Officer in a modification to this Agreement.

5.2. Program Reviews. The Recipient and the Government Technical Representative shall confer periodically (at least annually and whenever required or as may be directed by the Grants Officer) to review: the status of performance of the SOW; actual and forecasted expenditures and the sufficiency of funding; and, any technical, programmatic, and/or administrative issues that require resolution. The Grants Officer may specify additional areas to be addressed in the Program Reviews. The

Government Technical Representative will provide reports of the Program Reviews to the Grants Officer. Participation by the Government Technical Representative in such reviews shall not be a substitute for any required approvals by the Grants Officer. Such reviews may be conducted in person or by video or telephonic conferencing.

5.3. Modifications to the Performance Plan (SOW and Payable Milestones). All requests by the Recipient for modifications to the SOW or the Payable Milestones shall be supported by a written justification addressed to the Government Technical Representative and the Grants Officer. The written justification shall articulate the proposed modification and describe in detail: the reasons for the modification; changes in level of effort (to include labor, equipment, and materials); and, cost impact (to include a proposed adjustment to the Payable Milestones, if applicable).

ARTICLE 6. FINANCIAL ADMINISTRATION AND PAYMENTS.

6.1. Standards for Financial Management Systems. The Recipient may utilize its existing financial management system with additional controls (if required) to meet the applicable standards (as of the Effective Date) in 32 C.F.R. Subparts 32.21-28 for grants and agreements with institutions of higher learning, education, hospitals, and other non-government, non-profit organizations.

6.2. Allowable Costs. Allowability of costs shall be determined in accordance with the cost principles applicable to the Recipient or subrecipients incurring costs under this Agreement as provided in 32 C.F.R. 32.27 as follows:

6.2.1. OMB Circular A-122, Cost Principles for Nonprofit Organizations.

6.2.2. OMB Circular A-21, Cost Principles for Educational Institutions.

6.2.3. Appendix E to 45 C.F.R. Part 74, Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts With Hospitals.

6.2.4. OMB Circular A-87, Cost Principles for State and Local Governments.

6.2.5. Part 31 of the Federal Acquisition Regulation (FAR) (48 C.F.R. Part 31) for for-profit organizations.

6.3. Audit Requirements & Financial Records. The Recipient shall maintain adequate records to account for all Government funding under this Agreement and ensure that audit(s) sufficient to meet the requirements of 32 C.F.R. Part 32.26 are conducted. The Government shall have direct access to all relevant records and information of the Recipient during the period of performance and for three (3) years thereafter to ensure full accountability for all Government funding. Government access, examination, and audit shall be performed upon reasonable notice during regular business hours of the audited Party.

6.4. Limitation of Funds. This Agreement may be incrementally funded, and the funding currently obligated by the Government at any given time may not be sufficient to perform the entire SOW. It is the Recipient's responsibility at all times during the Period of Performance to ensure that the costs incurred by it and any of its subawardees do not exceed the amount of funds then expressly obligated by the Government. The Government is under no obligation to pay any costs incurred by the Recipient in excess of the funds expressly obligated by it to this Agreement (including any modifications).

6.5 Payments.

6.5.1. Payment Processing. The Recipient shall submit an original invoice and two copies of an invoice to the Administration Office. The invoice shall be accompanied by adequate documentation to support payment. Upon receipt of the invoice, the Administration Office will verify accomplishment with the Government Technical Representative. Upon verification, the Administration Officer will certify and forward the invoice to the Payment Office. If the invoice is not approved for payment, it shall be returned promptly to the Recipient with a detailed explanation of the reasons for non-approval.

6.5.2. Electronic Funds Transfer. Payments are authorized to be made by Electronic Funds Transfer (EFT). The Recipient agrees to maintain and keep current its registration in the Central Contractor Registry (CCR) of the Defense Finance and Accounting Service (including information necessary for making payment via EFT). The Recipient shall notify the Grants Officer of any change in its CCR registration [including its assigned Commercial and Government Entity (CAGE) Code]. The Government shall not be responsible for any misdirection or delay in payment which occurs as the result of Recipient's failure to maintain correct/current EFT information within its CCR registration.

ARTICLE 7. REPORTING REQUIREMENTS AND NOTICES.

7.1. The Recipient shall submit reports as set forth in AWARD/MODIFICATION HQ-NRL 4200/9 Block 31. All reports and correspondence shall reference the Agreement Number. Reports and notices concerning Intellectual Property shall be submitted to the NRL Associate Counsel (Intellectual Property) at the address provided in Block 26a AWARD/MODIFICATION HQ-NRL 4200/9.

Financial Reporting

1.1 Financial Status Reports

The Recipient shall submit Financial Status Reports in accordance with the requirements of Standard Form 269. All reports shall be submitted on Standard Form 269 and shall be compiled on an [accrual or cash] basis. *The Remarks section of Standard Form 269 shall include documentation to verify the in-kind contributions from all Recipients and sub-recipients or third parties, if applicable. Quarterly reports shall be submitted within 30 days following the end of each calendar quarter.*

Revised: 06/2005

The final Financial Status Report is required 90 days after the completion date for the term of this Agreement and must include in the remarks the location of financial records and a point of contact for the Government to obtain access to the financial records associated with this Agreement.

Payment Documentation

Payment Documentation - In support of each request for payment (invoice or SF-270) the following information , as applicable, must be supplied to the Government Technical Representative with a copy to the Grant/Agreement Administration Officer:

- A breakdown of the total requested payment by milestone or task;
- A breakdown of the cost sharing provided to date for each milestone or task;
- A copy of the Program Officer ' s certification that the milestone has been completed.

Audit Reports

The Recipient shall ensure that if an independent auditor is used for this Agreement, copies of any audits conducted shall be provided to the Government. At a minimum, the following should be provided: (1) a certified statement from the independent auditor for the Recipient stating the amount of matching funds applicable for each Government Fiscal Year allotment and a summary of the source of such matching amounts and (2) a certified statement from the independent auditor evidencing that Recipient has complied with all requirements of this Agreement. Upon completion or termination of this Agreement, the Recipient shall provide a list of all audits conducted which reviewed expenditures under this Agreement.

Invention Reports

The Recipient shall file annual Invention (Patent) Reports as of the close of the fiscal year and at the end of the term for this Agreement. Annual reports are due 60 days after the close of the Government Fiscal Year and final reports are due 6 months after the expiration of the final research period. The Recipient shall use DD Form 882, Report of Inventions and Subcontracts, to file the invention (patent) report. Negative reports are also required.

The disclosure of the Subject Invention shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication.

Progress Reports

The Recipient shall provide progress reports to the Government Technical Representative at the Management Meetings as required.

Annual Program Plan

The Recipient shall provide an Annual Program Plan as required by Article 5.

Final Report

Within 60 calendar days of completion or termination of this Agreement, the Recipient shall submit a Final Report addressing the technical achievements of the program. The report should provide a synopsis of the research performed and accomplishments made under the Agreement. No proprietary or classified information is to be included in the final report as it is subject to public release.

7.2. Notices. All notices (and requests for prior approval) authorized or required under this Agreement shall be in writing, in the English language, and sent to the appropriate addresses identified. Notices shall be effective when received, not when sent, according to the following circumstances:

7.2.1. If sent certified or registered mail, postage prepaid, return receipt requested, then the notice shall be deemed effective on the date the return receipt shows the notice was accepted, refused, or returned undeliverable;

7.2.2. Notices may be sent by facsimile transmission or electronic mail (e-mail) but such notices shall be effective only if the sender can produce documentary evidence to establish that the addressee actually received the notice.

7.2.3. NRL continues to experience delays in receipt of correspondence sent through the U.S. Postal Service due to irradiation processing. Therefore, it is recommended that correspondence sent to NRL be sent using a commercial delivery service.

ARTICLE 8. RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE.

8.1 Definitions.

8.1.1. Commercial Computer Software means software developed or regularly used for non-governmental purposes which has been: sold, leased, or licensed to the public; has been offered to the public or will be offered in time to satisfy the delivery requirements; or, requires minor modification to meet the requirements of this Agreement.

8.1.2. Commercial Item means any item, other than real property, that is of a type customarily used for nongovernmental purposes and that has been sold, leased, or licensed to the general public. Commercial Item does not include commercial computer software.

8.1.3. Computer Database means a collection of data recorded in a form capable of being processed by a computer.

8.1.4. Computer Program means a set of instructions, rules or routines recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.

8.1.5. Computer Software means computer programs, source code, source code listings, object code, object code listings, design details, algorithms, processes, flow charts, formulae and related material that would enable the software to be reproduced, recreated, or recompiled. Computer software does not include computer data bases or computer software documentation.

8.1.6. Computer Software Documentation means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

8.1.7. Detailed Manufacturing or Process Data means technical data that describe the steps, sequences, and conditions of manufacturing, processing or assembly used by the manufacturer to produce an item or component or to perform a process.

8.1.8. Developed means that an item, component, or process exists and is workable.

8.1.9. Developed Exclusively at Private Expense means development was accomplished entirely with costs charged to indirect cost pools, costs not allocated to a Government contract either as cost incurred or as required cost-sharing, or any combination thereof.

8.1.10. Developed Exclusively with Government Funds means development was accomplished with no expense by the Recipient.

8.1.11. Development with Mixed Funding means the development was accomplished at partial expense by the Recipient.

8.1.12. Form, Fit and Function Data means technical data that describes the required overall physical, functional, and performance characteristics of an item, component or process to the extent necessary to permit identification of physically and functionally interchangeable items.

8.1.13. Government Purpose means any activity in which the United States Government is a party or has an interest.

8.1.14. Government Purpose Rights means the rights to: (1) use, modify, reproduce, release, perform, display, or disclose technical data within the Government without restriction; and (2) release or disclose technical data outside the Government and authorize others to do so for Government purposes.

8.1.15. Item includes components or processes.

8.1.16. Limited Rights means the rights to use, modify, reproduce, release, perform, display, or disclose technical data, in whole or in part, within the Government.

8.1.17. Minor Modification means a modification that does not significantly alter the non-Governmental function or purpose of the software or is of the type customarily provided in the commercial marketplace.

8.1.18. Noncommercial Computer Software means software that does not qualify as commercial computer software.

8.1.19. Restricted Rights applies only to noncommercial computer software and means the Government's right to: use a computer program with one computer at one time; transfer the program to another agency if all copies are destroyed and the licensor is notified; make copies for archival or modification purposes; modify the software; permit use by contractors and subcontractors performing service contracts in support of this Agreement or related agreements or contracts; and, permit use by contractors or subcontractors performing emergency repairs or overhaul.

8.1.20. Technical Data means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation but not computer software).

8.1.21. Unlimited Rights means rights to use, modify, reproduce, perform, display, release, or disclose technical data in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.

8.2. The Recipient shall grant or obtain for the Government the following royalty-free, world-wide, nonexclusive, irrevocable license rights in technical data (including computer software documentation) and computer software that are developed, delivered, or required to be delivered to the Government under this Agreement. The Recipient retains all rights not granted to the Government.

8.2.1. The Government shall have and be provided **Unlimited Rights** in Technical Data that are developed, delivered, or required to be delivered to the Government under this Agreement that are:

8.2.1.1. data developed exclusively with Government funds, and data pertaining to an item, component, or process developed exclusively with Government funds;

8.2.1.2. studies, analyses or similar data produced as an element of performance of the SOW;

8.2.1.3. form, fit and function data;

8.2.1.4. necessary for installation, operation, maintenance, or training purposes;

8.2.1.5. corrections or changes to Government-furnished data;

8.2.1.6. publicly available or available to the Government with unlimited rights; or,

8.2.1.7. data with expired Government-purpose rights.

8.2.2. The Government shall have **Unlimited Rights** in Computer Software and Computer Software Documentation that are developed, delivered, or required to be delivered to the Government under this Agreement that are:

8.2.2.1. Computer Software developed exclusively with Government funds;

8.2.2.2. Computer Software Documentation required to be delivered;

8.2.2.3. corrections or changes to Computer Software or its documentation furnished by the Government;

8.2.2.4. Computer Software publicly available or available to the Government with unlimited rights; or,

8.2.2.5. Computer Software and Computer Software Documentation with expired Restricted Rights or Government Purpose Rights.

8.2.3. The Government shall have **Government Purpose Rights** for a period of five years (or for such other period as may be negotiated by the Parties in a modification to this Agreement) from the Effective Date in Technical Data and Noncommercial Computer Software developed, delivered, or required to be delivered under this Agreement that are or have been developed with mixed funding or pertain to items, components, or processes developed with mixed funding, **unless** the Government otherwise acquires or is accorded greater rights in the Technical Data or Noncommercial Computer Software notwithstanding development with mixed funding. Upon expiration of the period for Government Purpose Rights, the Government shall have Unlimited Rights.

8.2.3.1. The Government will not disclose Technical Data or Noncommercial Computer Software during the period when Government Purpose Rights apply unless the disclosure is made subject to a nondisclosure agreement or the recipient is a Government contractor subject to compliance with the clause at DFARS 252.227-7025.

8.2.3.2. The Recipient has the exclusive right (including the right to license others) to use Technical Data and Noncommercial Computer Software for commercial purposes during the period when Government Purpose Rights apply.

8.2.4. The Government shall have **Limited Rights** in Technical Data developed, delivered, or required to be delivered under this Agreement that are or have been Developed Exclusively at Private Expense or pertain to items, components, or processes Developed Exclusively at Private Expense and are so marked, **unless** the Government otherwise acquires or is accorded greater rights in the Technical Data notwithstanding development exclusively at private expense. The Government may disclose Technical Data in which it has Limited Rights outside the Government for purposes of emergency repair or overhaul. Such disclosures shall be subject to a nondisclosure agreement (unless made to a Government contractor subject to compliance with the clause at DFARS 252.227-7025) and require that the Technical Data recipient destroy the Technical Data and all copies upon completion of work and notify Recipient of the destruction.

8.2.5. The Government shall have **Restricted Rights** in Noncommercial Computer Software that is developed, delivered, or required to be delivered to the Government under this Agreement that are or have been Developed Exclusively at Private Expense.

8.2.6. In **Commercial Computer Software** delivered or required to the Government under this Agreement, the Government shall have the usual license rights provided by the owner or authorized supplier to its commercial customers.

8.3 The Recipient shall not, without written approval of the Grants Officer, incorporate or deliver any copyrighted (or patented in the case of Computer Software) Technical Data, Computer Software or Computer Software Documentation in which the license rights required to be provided to the Government have not been obtained.

8.4 The Government shall retain its rights in Technical Data, Computer Software, and Computer Software Documentation that it furnishes to the Recipient for use in performance of work under this Agreement. The Government's rights in derivative Technical Data, Computer Software, or Computer Software Documentation developed by the Recipient in performance of this Agreement shall be determined in accordance with the preceding provisions for rights in Technical Information, Computer Software, and Computer Software Documentation.

8.5 The Recipient must identify in an attachment to this Agreement and mark all Technical Data, Computer Software, and Computer Software Documentation with all restrictions on use, release, or disclosure that it asserts. Throughout the performance of this Agreement, the Recipient, its Sub-recipients and suppliers that will deliver Technical Data, Computer Software, or Computer Software Documentation with less than unlimited rights must have, maintain, and follow written procedures to assure that the restrictive markings are justified and keep records of the procedures. The

Government may ignore or, at the Recipient's expense, correct or strike a marking that is determined to be unjustified. This paragraph does not apply to restrictions based solely on copyright.

8.6 The Recipient shall ensure that the rights afforded its Subrecipients and suppliers under 10 U.S.C. § 2320 and § 2321 are recognized and protected. The Recipient shall use this Article 8 in its subagreements and not change the rights provided by this Agreement.

ARTICLE 9. RIGHTS IN INVENTIONS AND PATENT RIGHTS.

9.1 Definitions.

9.1.1. Invention means any invention or discovery which is or may be patentable or otherwise protected under Title 35 of the United States Code.

9.1.2. Made when used in relation to any Invention means the conception or first actual reduction to practice of such Invention.

9.1.3. Practical Application means: to manufacture in the case of a composition or product; to practice in the case of a process or method; to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the

Invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

9.1.4. Subject Invention means any invention of the Recipient conceived or first actually reduced to practice in the performance of this Agreement.

9.2 Allocation of Rights.

9.2.1. The Recipient may retain the entire right, title, and interest throughout the world to each Subject Invention subject to the provisions of this clause and 35 U.S.C. § 203. With respect to any Subject Invention in which the Recipient retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the Subject Invention throughout the world.

9.2.2. The Recipient shall convey to Government, upon written request, title to any Subject Invention if the Recipient fails to disclose or elect title to the subject invention within the times specified in section 9.3 of this article, or elects not to retain title;

9.2.3. The Recipient shall convey to the Government, upon written request, title to any Subject Invention in any country where the Recipient decides not to file a patent application or continue the prosecution of any patent application.

9.2.4. The Recipient will retain a nonexclusive royalty-free license throughout the world in each Subject Invention to which the Government obtains title, except if the Recipient fails to disclose the invention within the times specified in section 9.3 of this Article 9. The Recipient's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Recipient is a party and includes the right to grant

sublicenses of the same scope to the extent the Recipient was legally obligated to do so at the time this Agreement was awarded. The license may be revoked or modified by the Government to the extent necessary to achieve expeditious practical application of the Subject Invention.

9.3 Invention Disclosure, Election of Title and Filing of Patent Application.

9.3.1. Recipient shall disclose each Subject Invention to the Government within two months after the inventor discloses it in writing to Recipient's personnel responsible for patent matters. The disclosure shall be in the form of a written report and shall identify the Agreement under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication or other bar under 35 U.S.C. § 102(b) that may exist, as well as anticipated bars. This obligation is a continuing obligation.

9.3.2. The Recipient shall notify the Government in writing of its election to retain title to a Subject Invention within two years of its disclosure to the Government. The period for election of title may be shortened by the Government to no more than sixty days prior to the loss of the right to obtain patent protection in the United States.

9.3.3. The Recipient shall file its initial patent application in the United States on a Subject Invention within one year after the election to retain title. The Recipient shall file in additional countries or international patent offices within 10 months after the U.S. filing date.

9.3.4. Requests for extension of time under this section may be granted at the discretion of the Government.

9.4. Recipient's Actions to Protect the Government's Interest.

9.4.1. The Recipient agrees to execute or to have executed and promptly deliver to the Government all instruments necessary to confirm or establish the rights or title of the U.S. Government in a Subject Invention or to enable the Government to obtain patent protection.

9.4.2. The Recipient agrees to require, by written agreement, its employees to send promptly, but not later than three months after the invention is made, a written description of each Subject Invention to its personnel who are responsible for the administration of patent matters.

9.4.3. The Recipient will notify the Government of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

9.4.4. The Recipient agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a Subject Invention, the following statement, "This invention was made with Government support under (identify the agreement) awarded by the Government. The Government has certain rights in the invention."

9.5. Subawards. The Recipient will include this Article 9, suitably modified to identify the Parties, in all subawards, regardless of their tier, for experimental, developmental or research work to be performed by a small business firm or domestic nonprofit organization. The Subrecipient will retain all rights provided for the Recipient in this clause.

9.6. Reporting on Utilization of Subject Inventions. The Recipient agrees to submit, on request, periodic reports no less frequently than annually on the utilization of each Subject Invention or on the efforts at obtaining such utilization by Recipient or its licensees or assignees. The report will include data and information that the Government may reasonably specify.

9.7. Preference for United States Industry. The Recipient agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any Subject Inventions in the United States unless such person agrees that any products embodying

the Subject Invention or produced through the use of the Subject Invention will be manufactured substantially in the United States. However, in individual cases,

the requirement for such an agreement may be waived by the Government upon a showing by the Recipient or its assignee that reasonable but unsuccessful efforts have

been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

9.8. March-in-Rights. The Recipient agrees that, with respect to any Subject Invention in which it has acquired title, the Government has the right to either (1) require the Recipient, an assignee or an exclusive licensee of the Subject Invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable, or (2) if the Recipient, assignee, or exclusive licensee refuses to grant such a license, to grant the license itself, whenever the Government determines that such action is necessary to:

9.8.1. Achieve practical application of the Subject Invention; or

9.8.2. Alleviate health or safety needs that are not being reasonably satisfied; or

9.8.3. Meet requirements for public use that are not being reasonably met; or

9.8.4. Meet the requirements of section 9.7 of this Article.

9.9 Use of Patented Inventions and Copyrighted Materials. The Government does not by entry into this Agreement give its authorization and consent under 28 U.S.C. 1498 for the use or manufacture of any invention described in and covered by a patent of the United States or for the use of any material protected under the copyright laws of the United States. Should the Recipient determine that there is a need for the use of any such invention or copyrighted material, the Recipient may request the appropriate authorization and consent from the Grants Officer.

9.10 Notice and Assistance Regarding Alleged Patent and Copyright Infringement.

9.10.1. The Recipient shall report to the Grants Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Agreement of which the Recipient has knowledge.

9.10.2. In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this Agreement or out of the use of any supplies furnished or work or services performed under this Agreement, the Recipient shall furnish to the Government, when requested by the Grants Officer, all evidence and information in the possession of the Recipient pertaining to such suit or claim.

9.10.3. The Recipient agrees to include, and require inclusion of, this clause in all subawards/subcontracts at any tier for research, or research-related supplies and services, expected to exceed \$100,000.00.

ARTICLE 10. EXPORT CONTROLS AND FOREIGN ACCESS TO TECHNOLOGY.

10.1. Definitions.

10.1.1. Foreign Firm or Institution means an entity organized or existing under the laws of a country other than the United States, its territories, or possessions. The term includes, for purposes of this Agreement, any agency or instrumentality of a foreign government and firms, institutions or business organizations which are owned or substantially controlled by foreign governments, firms, institutions, or individuals.

10.1.2. Know-How means all information first produced in the performance of this Agreement including but not limited to discoveries, formulas, materials, inventions, processes, ideas, approaches, concepts, techniques, methods, software, programs, documentation, procedures, firmware, hardware, technical data, specifications, devices, apparatuses and machines.

10.1.3. Technology means discoveries, innovations, Know-How and Subject Inventions, whether patentable or not, including computer software, recognized under U.S. law as intellectual creations to which rights of ownership accrue. The term also includes patents, trade secrets, mask works, and copyrights developed under this Agreement.

10.2. Recipient acknowledges that it is subject to and shall comply with all applicable United States laws, regulations, and Executive orders, pertaining to exporting from the United States. Recipient shall not export or disclose to any foreign person any Technical Information used or developed under this Agreement without first having, solely at its own expense, complied with all applicable export licensing requirements and restrictions.

10.3. Research findings and technology developments made under this Agreement may constitute a significant enhancement to the national defense and to the economic vitality of the United States, and the transfer of such findings and developments to Foreign Firms and Institutions must be carefully controlled. The following controls apply to this Agreement in addition to those in Article 10.2 above.

10.3.1. Restrictions on Sales and Transfers of Technology to a Foreign Firm or Institution. In order to promote the national security interests of the United States and to effectuate the policies that underlie the U.S. export control laws and regulations, the procedures stated below shall apply to any transfer of Technology. For purposes of this paragraph, a transfer includes a sale of a company as well as sales and licensing of Technology. Transfers do not include: (1) sales of products or components; (2) licenses of software or documentation related to sales of products or components; (3) the transfer to foreign subsidiaries of the Recipient or participants for purposes related to this Agreement; or, (4) a transfer which provides access to Technology to a Foreign Firm or Institution which is an approved source of supply or source for the conduct of research under this Agreement provided that such transfer shall be limited to that necessary to allow the firm or institution to perform its approved role under this Agreement.

10.3.1.1. The Recipient shall provide at least sixty (60) days advance written notice to the Government Technical Representative and Grants Officer of any transfers of Technology developed with Government funding under this Agreement that it proposes to make to a Foreign Firm or Institution. Such notice shall cite this Article 10 and state specifically what is to be transferred, to whom the transfer is to be made, and the general terms of the transfer.

10.3.1.2. Within thirty (30) calendar days after receipt of the Recipient's written notification, the Grants Officer shall advise the Recipient whether it consents to the proposed transfer. If the Government determines that the transfer may have adverse consequences to the national security interests of the United States, the Recipient and the Government shall jointly endeavor to find alternatives to the proposed transfer which would obviate or mitigate the potential adverse consequences to National Security.

10.3.1.3. In cases where the Government does not concur with the transfer [or sixty (60) calendar days after receipt of the request if the Government has not provided a decision], the Recipient may utilize the procedures under Article 12, Claims, Disputes, and Appeals.

10.3.1.4. In the event the transfer of Technology to a Foreign Firm or Institution is approved by the Government, the Recipient may be required to refund all or a portion of the Government funds paid under this Agreement for the development of the Technology. In the event Recipient makes a transfer of Technology to a Foreign Firm or Institution that is not approved by the Government (or that violates applicable export laws or regulations), the Recipient shall refund all Government funds paid under this Agreement for the development of the Technology.

10.4. Subawards. The Recipient shall include this Article 10, suitably modified to identify the Parties, in all subcontracts or lower tier agreements, regardless of tier, for experimental, developmental, or research work.

ARTICLE 11. SUSPENSION AND TERMINATION.

11.1. Upon making a determination that the Recipient is not in compliance the terms and conditions of this Agreement, the Grants Officer may suspend performance through a written notification to the Recipient that sets forth the effective date of the suspension and the reasons. The Recipient shall have thirty (30) calendar days to provide evidence of compliance. Thirty (30) calendar days after serving the notice of suspension, if the Grants Officer determines that substantial evidence of compliance has not been provided, the Grants Officer may direct the Recipient to suspend further expenditure of Government funds and terminate this Agreement as provided below.

11.2. Termination.

11.2.1. With or without prior suspension, this Agreement may be terminated in whole or in part:

11.2.1.1. by the Grants Officer upon a determination that the Recipient is not in compliance with the terms and conditions of this Agreement;

11.2.1.2. by mutual agreement of the Parties, in which case the Parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated; or

11.2.1.3. by either Party upon sending to the other Party written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated (the terminating Party must provide such notice at least 30 days prior to the effective date of the termination).

11.2.1.4. If either Party determines in the case of partial termination that the reduced or modified portion of the award will not accomplish the purpose for which the Agreement was executed, either Party may terminate the Agreement in its entirety.

11.2.2. In the event that the Grants Officer terminates the Agreement in accordance with 11.2.1.1 above, the Recipient shall be notified in writing of the termination and its effective date.

11.3. Claims Arising from Suspension or Termination. In the event of suspension or termination, any claim by the Recipient for costs incurred under this Agreement must be received within 6 months after the date of suspension or termination. No termination costs are payable in the event of a termination based on the Recipient's failure to comply with the terms and conditions of this Agreement. The Government's total liability for work supported by this Agreement and for any claims, including suspension or termination claims, shall not exceed the Federal funds obligated on the Agreement as set forth herein. Allowability of costs under any termination claim shall be determined in accordance with 32 C.F.R. 32.62(c).

ARTICLE 12. CLAIMS, DISPUTES, AND APPEALS.

12.1. Good Faith. The Parties shall communicate with each other in good faith and in a timely manner when raising and attempting to resolve issues under this Article.

12.2. Recipient Claims. Recipients shall submit claims arising out of this Agreement to the Grants Officer. Claims shall specify the nature and basis for the relief requested and shall include all data and relevant facts necessary to support of the claim.

12.3. DOD Component Claims. Claims by the Government against the Recipient shall be the subject of a written decision by the Grants Officer.

12.4. Alternative Dispute Resolution (ADR). The Parties shall endeavor to agree upon an ADR technique (such as discussions, mediation, or mini-trial) appropriate to resolve any dispute, and they shall use ADR to the maximum extent practicable.

12.5. Grants Officer decisions.

12.5.1. Within 60 calendar days after receipt of a written claim, the Grants Officer shall:

12.5.1.1. Prepare a written decision, which shall state the relevant facts and the basis for the decision, and notify the Recipient of the name and address of the cognizant Appeal Authority; or

12.5.1.2. Notify the Recipient of a date when the decision will be rendered. The notice shall address why additional time is needed and what, if any, additional information is required from the Recipient to adjudicate the claim.

12.5.2. The Grants Officer's decision is final, unless appealed. In the event of an appeal, the Parties shall endeavor to use ADR procedures to the maximum extent practicable.

12.6. Formal Administrative Appeals.

12.6.1. Appeal Authority. The Executive Director of the Acquisition Department, Office of Naval Research, is the Appeal Authority designated to decide formal, administrative appeals under this Agreement. If the Executive Director is unable to serve in this capacity, the Deputy Chief of Naval Research shall so serve.

12.6.2. A Recipient may appeal a Grants Officer's decision within 90 calendar days of receiving the decision by filing a written notice of appeal with the Appeals Authority and the Grants Officer. The Director of Acquisition for ONR will acknowledge receipt of the request for review.

12.6.3. If the Parties elect to use ADR following the Grants Officer's decision, the remaining portion of the 90-day period for filing notice of appeal shall be tolled during the period running from the date the Parties agree in writing to utilize ADR to the date either (1) an ADR decision is issued or (2) one Party notifies the other in writing that it is abandoning the ADR process.

12.6.4. Appeal File. Within 30 calendar days of receipt of the notice of appeal, the Grants Officer shall forward to the Appeal Authority and the Recipient the appeal file, which shall include copies of all documents relevant to the appeal. The Recipient may supplement the file with additional documents it deems relevant. Either Party may supplement the file with a memorandum in support of its position, and the Appeal Authority may request additional information from the Parties.

12.6.5. Decision. The appeal shall be decided solely on the basis of the written record, unless the Appeal Authority decides, in his sole discretion, to conduct additional fact-finding or to hold an oral hearing on the appeal. Any fact-finding or hearing shall be conducted using procedures that the Appeal Authority deems appropriate. The Appeal Authority will provide a written final determination to the Parties.

12.6.6. Representation. A Recipient may be represented by counsel or any other designated representative at its own expense in any claim, appeal, or ADR proceeding brought pursuant to this section, as long as the representative is not otherwise prohibited by law or regulation from appearing before ONR.

12.6.7. Recipient will proceed diligently with performance of this Agreement pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Grants Officer.

12.6.8. Nothing in this Article 12 is intended to limit a Recipient's right to any remedy under the law. If the Recipient chooses not to participate in the Dispute Resolution Procedure or does not accept the results of the Dispute Resolution Procedure, the Recipient may pursue such redress as may be authorized by United States statutes.

ARTICLE 13. LIABILITY.

13.1. The Government shall be solely liable for the negligent or wrongful acts of its officers and employees to the extent provided for in the Federal Tort Claims Act (28 USC 2671 et. seq.) and in other applicable laws and regulations of the United States that specifically waive sovereign immunity. Nothing in this Agreement shall be construed as a waiver of the sovereign immunity of the United States.

13.2. Recipient is solely responsible for its actions and the actions of those acting for it in the performance of this Agreement and for any damages that may arise from any suit, action, or claim resulting from such actions, and for any costs from or incidental to any such suit, action, or claim, including but not limited to settlement and defense costs. Further, Recipient agrees that it shall not pursue litigation or any other judicial or administrative recourse against the Government in, or take any action to enter the Government as party to, any such suit, action, or claim in which Recipient may become involved.

13.3. Environmental Liability. The Recipient is responsible for achieving compliance with all environmental laws applicable to the work performed under this Agreement, including but not limited to any licenses and permit applications required under Federal, State, or local laws or regulations. The Recipient shall not name the United States, the Department of the Navy (DON), or any other Government agency, instrumentality or employee as an owner, operator or in any other capacity on any license or permit application required under environmental laws unless written consent is first obtained from an authorized agent of the Federal agency or instrumentality to be named.

13.4. Disclosure of Unmarked Data. The United States Government is not responsible for any disclosure or transfer of proprietary data or software that was not marked by the data owner in accordance with this Agreement.

ARTICLE 14. GENERAL PROVISIONS.

14.1. Property Management. The Recipient shall manage property acquired or furnished under this Agreement in accordance with the guidance at 32 C.F.R. Subparts 32.30-32.37.

14.1.1 Prior Approval to Purchase Equipment with Federal Funds. Prior written approval of the Grants Officer is required before the Recipient may purchase equipment in whole or in part with Federal funds under this Agreement. Prior approval to purchase equipment listed in the Recipient's original cost proposal and statement of work is provided by the execution of this Agreement.

14.1.2 Title to Acquired Property. Title to acquired property shall be determined in accordance with the applicable provisions in property standards established in 32 C.F.R. Subparts 32.30 through 32.37.

14.2 Security and Publications Approval.

14.2.1. Security. The Recipient's personnel will not have access to classified United States Government information under this Agreement. If security restrictions should happen to apply to certain aspects of the proposed Agreement, the Grants Officer will inform the Recipient. The Recipient shall promptly notify the Grants Officer if information is developed which might, if disclosed, affect the national security adversely. Written concurrence from the Grants Officer must be obtained prior to disclosure of such information.

14.2.2 Publications. The Parties agree to confer and consult with each other prior to publication or other public disclosure of the results of work under this Agreement to ensure that no classified data, proprietary information, military critical technology or other controlled information is released. Prior to submitting a manuscript for publication or before any other public disclosure, each Party will offer the other Party ample opportunity to review such proposed publication or disclosure, to submit objections, and to file applications for letters patent in a timely manner.

14.2.3 Controlled Information. The Parties understand that information and materials provided pursuant to or resulting from this Agreement may be export controlled, classified, or unclassified sensitive and protected by law, executive order or regulation. Each Party is responsible for compliance with all applicable laws and regulations. Nothing in this Agreement shall be construed to permit any disclosure in violation of those restrictions.

14.3. Waiver of Rights. Waiver of any requirement contained in this Agreement shall be by mutual agreement of the Parties. Any waiver shall be reduced to writing and a copy of the waiver shall be provided to each Party. Failure to insist upon performance of any of the terms and conditions of the Agreement shall not be deemed a waiver of any rights by any Party.

14.6. Severability. If any clause, provision or section of this Agreement is held to be illegal or invalid by any court, the invalidity of such clause, provision or section shall not affect any of the remaining clauses, provisions or sections hereof and this Agreement shall be construed and enforced as if such illegal or invalid clause, provision or section had not been contained herein.

14.7. Force Majeure. Neither Party shall be in breach of this Agreement for any failure to perform caused by any event beyond its reasonable control and not caused by the fault or negligence of that Party. In the event such a *force majeure* event occurs, the Party unable to perform shall promptly notify the other Party, and in good faith continue performance to the extent reasonably possible.

14.8. Assignment of Claims.

14.8.1. Pursuant to the provisions of the Assignment of Claims Act of 1940, as amended, 31 U.S.C. 3727, 41 U.S.C. 15, claims for monies due or to become due to the Recipient from the Government under this Agreement may be assigned to a bank, trust company, or other financial institution, including any such Federal institution. Any such assignment or re-assignment shall cover all amounts payable under this Agreement and not already paid, and shall not be made to more than one party as agent or trustee for two or more parties participating in such financing. All assignment and re-assignment final decisions are subject to review by the cognizant Administration Officer.

14.8.2. Copies of this Agreement, or any plans, specifications, or other similar document relating to work under this Agreement, if marked "TOP SECRET", "SECRET", "CONFIDENTIAL", or "U.S. GOVERNMENT USE ONLY," shall not be furnished to any assignee of any claim arising under this Agreement, or to any person not entitled to receive the same, without the prior written authorization of the Grants Officer.

14.9. Governing Laws & Regulations. This Agreement shall be enforced and interpreted in accordance with applicable federal laws and regulations, directives, circulars or other guidance. Federal laws and regulations shall govern in the event of any conflict with the provisions of this Agreement.

14.10. Entire Agreement. This Agreement consists of the Award/Modification HQ-NRL 4200/9, Agreement Terms, and Attachments listed in Block 27 of AWARD/Modification HQ-NRL 4200/9 and constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes any prior understanding or written or oral agreement relative to said matter.

14.11. This Agreement may not be assigned by either Party without the express written consent from the other Party.

14.12. This Agreement shall be enforced and interpreted in accordance with applicable Federal laws and regulations, directives, circulars or other guidance. Federal laws and regulations shall govern in the event of any conflict with the provisions of this agreement.

14.13. Metric System of Measurement. In accordance with the Metric Conversion Act of 1975 as amended (15 U.S.C. 205), the metric system of measurement will be used, to the extent practicable and economically feasible, in measurement-sensitive activities.

14.14. Procurements by Participants shall comply with applicable requirements of the the DoDGARs set forth at 32 C.F.R Subparts 32.40-49.

14.15. SURVIVING PROVISIONS. The Articles covering Definitions, Funding, Reports and Publications, Rights in Technical Data and Computer Software, Rights in Inventions and Patent Rights, Tangible Property, Liability, General Provisions, and Surviving Provisions shall survive the completion, termination, or expiration of this Agreement.

ARTICLE 15. REPRESENTATIONS AND CERTIFICATIONS.

15.1. Recipients shall comply with all the requirements of DoDGARs Part 25, Subpart C, "Government-Wide Suspension and Debarment (Nonprocurement)", 32 CFR Part 25, Subpart C. The recipient shall include a similar term or condition in lower-tier covered transactions as required by DoDGARs Part 25, Subpart B, 32 CFR Part 25 (2004).

15.2. By accepting funds under this Agreement, the recipient agrees to comply with the "Government –Wide Drug-Free Workplace (Grants)" requirements specified by DoDGARS Part 26, Subpart B (or Subpart C, if the recipient is an individual) of 32 CFR Part 26 (2004), which implements sec.5151-5160 of Drug-Free Workplace Act of 1988 (41 U.S.C. 701,et seq.).

15.3 By signing this Agreement or accepting funds under this Agreement, the Recipient assures that it will comply with all provisions of United States national laws, regulations, and policies that are lawfully applicable to it with respect to prohibiting discrimination on the bases of race, color, or national origin (42 U.S.C. 2000d, et seq., as implemented by DoD 32 CFR part 195); on the basis of race, color, religion, sex, or national origin (Executive Order 11246 and 41 CFR part 60); on the basis of sex or blindness (20 U.S.C. 1681, et seq.); on the basis of age (42 U.S.C. 6101, et seq. and 45 CFR Part 90); and, on the basis of handicap (29 U.S.C. 794, 28 CFR part 41, and 32 CFR part 56).

END OF NRL COOPERATIVE AGREEMENT TERMS